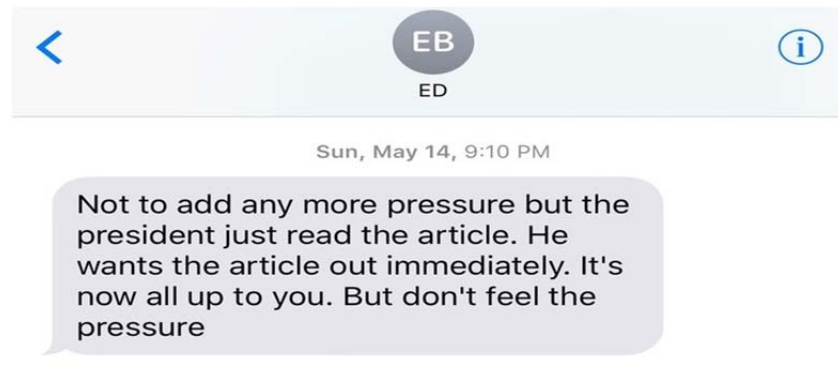


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
ROD WHEELER,	:	
	:	
Plaintiff,	:	Civil Action No.: 17-cv-05807 (GBD)
	:	
v.	:	
	:	<u>AMENDED COMPLAINT</u>
TWENTY-FIRST CENTURY FOX, INC., FOX	:	
NEWS NETWORK LLC, MALIA	:	
ZIMMERMAN, in her individual and professional	:	<u>Jury Trial Demanded</u>
capacities and ED BUTOWSKY, in his individual	:	
and professional capacities,	:	
	:	
Defendants.	:	
-----	X	

PRELIMINARY STATEMENT

1. On May 14, 2017, Mr. Wheeler received the following text message from Defendant Ed Butowsky:



2. The “president” referred to in this text message is President Donald Trump. The “Article” – which was published by Fox less than 36 hours after this text message was sent – reported that a murdered Democratic National Committee (“DNC”) staffer, Seth Rich, was the source of the now infamous DNC emails leaked by WikiLeaks during the 2016 Presidential

primaries.¹ The motivation behind the Article: establish that Seth Rich provided WikiLeaks with the DNC emails to shift the blame from Russia and help put to bed speculation that President Trump colluded with Russia in an attempt to influence the outcome of the Presidential election. Incredibly, according to Butowsky, the President reviewed a draft and sought to get the Article published “immediately.” Indeed, just before Butowsky sent the text message above, he left a voicemail for Mr. Wheeler in which he said, “A couple minutes ago I got a note that we have the full, uh, attention of the White House, on this. And, tomorrow, let’s close this deal, whatever we’ve got to do. But you can feel free to say that the White House is onto this now.”²

3. To lend support to this shift the blame theory, Fox reporter Malia Zimmerman (“Zimmerman”), working together with Butowsky and under the supervision of her editors at Fox, fabricated two quotations and attributed them to Mr. Wheeler:

- “‘My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,’ said Wheeler.”
- “‘My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,’ Wheeler said. ‘That is unfortunate. Seth Rich’s murder is unsolved as a result of that.’”

4. Mr. Wheeler – who was the only named source quoted in the Article – did not make these statements. According to Butowsky, the statements were falsely attributed to Mr. Wheeler because that is the way the President wanted the Article. Zimmerman, Butowsky and Fox created fake news to advance President Trump’s agenda. Mr. Wheeler was subsequently forced to correct the false record and, as a result, lost all credibility in the eyes of the public. Mr.

¹ A copy of the Article is attached as Exhibit 1. It is no longer available online at foxnews.com.

² Every quotation in this Amended Complaint is from an email, text message, published news article and/or recorded or videotaped conversation.

Wheeler has suffered irreparable damage to his reputation and his career will likely never recover.

5. Butowsky is a frequent contributor for Fox, an outspoken supporter of Donald Trump and opponent of Hillary Clinton, and a friend to former Press Secretary Sean Spicer and former Chief Strategist Steve Bannon. Butowsky attended President Trump's inauguration and recently uploaded to his Facebook page a photograph of him in the White House briefing room. <http://www.nbcnews.com/politics/white-house/dnc-staffer-s-murder-draws-fresh-conspiracy-theories-n760186>. Butowsky also is a frequent author and contributor at Breitbart.com. See <http://www.breitbart.com/author/ebutowsky/>. By way of example only, during the recent Presidential campaign, Butowsky authored an article in which he opined that Hilary Clinton was not capable of basic math and just "did not understand" things that her husband, Bill Clinton, tried "to explain" to her. See <http://www.breitbart.com/big-government/2016/06/03/hillary-clinton-taxes-workers/>. Butowsky has ties to Steve Bannon, the former White House Chief Strategist and former Chief Executive Officer of Breitbart news. Of Bannon, Butowsky has said "I consider him a friend and a very nice man." https://www.buzzfeed.com/josephbernstein/the-man-behind-the-seth-rich-private-investigation-has-a?utm_term=.migyzVMXV#.yjdVOpb6p. According to *Buzzfeed*, Butowsky and Bannon met through Breitbart, where Butowsky was a contributor. In addition, Bannon has interviewed Butowsky for Breitbart Radio.

6. Mr. Wheeler is a former Washington D.C. Police homicide detective who works independently at his own private investigative consultant company. Prior to the events underlying this action, Mr. Wheeler made regular appearances on Fox programs to discuss local and national crime stories.

7. Zimmerman is an investigative journalist with Fox.

8. In February 2017, Butowsky reached out to Mr. Wheeler and offered to bankroll an investigation into Seth Rich's murder. Butowsky explained that he was working with Zimmerman.

9. As it turned out, Butowsky and Zimmerman were not simply Good Samaritans attempting to solve a murder. Rather, they were interested in advancing a political agenda for the Trump Administration. Specifically, it was their aim to have Mr. Wheeler confirm that: (i) Seth Rich was responsible for the leak of DNC emails to WikiLeaks; and (ii) Seth Rich was murdered by a Democrat operative because he leaked the emails to WikiLeaks.

10. Butowsky and Zimmerman hoped that, if they could confirm that Seth Rich leaked the DNC emails to WikiLeaks, that would debunk reports the Russians were responsible for the DNC hacks. In turn, Butowsky and Zimmerman hoped that, if they could shift the blame for the DNC hacks from the Russians to Seth Rich, this would undermine reports of collusion between Russia and the Trump Administration.

11. Butowsky and Zimmerman were not in this alone. Rather, in the weeks and months leading up to the publication of the Article, Butowsky kept in regular contact with Trump Administration officials – including Mr. Spicer, Mr. Bannon and Director of Public Affairs at the Department of Justice, Sarah Flores – regarding his efforts relating to Seth Rich.

12. Moreover, Fox senior editors Greg Wilson and Refet Kaplan worked with Zimmerman and Butowsky on the Article and made the decision to publish it on May 16, 2017.

13. As noted above, Butowsky informed Mr. Wheeler two days before the Article came out that President Trump had read it and wanted it published “immediately.”

14. Prior to that, Butowsky and Mr. Wheeler met with Mr. Spicer and provided him with a copy of Mr. Wheeler's investigative notes. Mr. Spicer asked to be kept abreast of

developments and, upon information and belief, Butowsky did keep Mr. Spicer abreast of developments.

15. Then, very shortly after the article was published, Mr. Wheeler called Butowsky and demanded an explanation for the false statements attributed to him in the Article. Butowsky stated that *the quotes were included because that is the way the President wanted the Article,* referring to President Donald Trump.

16. A few days later, Butowsky wrote to Zimmerman, *“I didn’t tell you yet but the federal government is involved at this moment, behind the scenes and believe your story.”*

17. The political motivations for the publication of the Article on May 16, 2017 also are evidenced by many statements made between February and May 2017, including, *inter alia*:

- When Butowsky was told by controversial journalist Seymour (Sy) Hersh of a purported FBI report establishing that Seth Rich sent emails to WikiLeaks, he stated: *“the most important thing is this. Everyone, there’s so many people throughout Trump’s four years and maybe eight years are always going to fall back on the idea that he is not legitimate and the Russians got him elected. This [information about Seth Rich providing emails to WikiLeaks] changes all of that.”*
- Butowsky also said that with this information, *“[w]e solve the problem about Russians are the ones that gave the emails because that did not happen. I know that did not happen.”*
- Just before midnight on May 15, 2017, Butowsky sent an email regarding Zimmerman’s Seth Rich story to various Fox producers and on air talent, including Steve Doocy, Gavin Hadden, Ainsley Earhardt and Brian Kilmeade. The email reads, in part: “If you have any questions about the story or more information needed, call me at 972-[XXX-XXXX]. I’m actually the one who’s been putting this together but as you know I keep my name out of things because I have no credibility. *One of the big conclusions we need to draw from this is that the Russians did not hack our computer systems and steal all emails and there was no collusion like trump with the Russians.*”

- At approximately the same time, Butowsky sent a text message to Mr. Wheeler that reads, in part, “[t]he narrative in the interviews you might use is that your and Malia’s work prove that the Russians didn’t hack into the DNC and steal the emails and impact our election.”
- The next morning, Butowsky sent text messages to Mr. Wheeler that read, in part, “If you can, try to highlight this puts the Russian hacking story to rest.” “Just reflecting: we need to emphasize the FBI has a report that has been suppressed that shows that Seth rich did this. With Comey recently being fired this will gain a lot of attention and it’s true.” “The above and stating that the Russian hacking narrative of stealing the records from the DNC is officially dead.”
- Even after Mr. Wheeler confronted Zimmerman about her use of false quotes, Zimmerman sent a text to Mr. Wheeler that stated, “Reread the story we sent to you last night [with the false quotes] and stick to that script.”

18. Notably, the word “we” in Zimmerman’s text referred to her and Butowsky.

19. Butowsky’s reference to former FBI Director James Comey’s termination is critical. On the morning of March 30, 2017, President Donald Trump called James Comey. During the call, the President described the Russia investigation as a cloud that was impairing his ability to act on behalf of the country. He said he had nothing to do with Russia and asked what could be done to lift the cloud. The President went on to say that if there were some “satellite” associates of his who did something wrong, it would be good to find that out, but that the President hadn’t done anything wrong and hoped that Director Comey would find a way to get it out that he was not being investigated. The Russia investigation continued and Director Comey was fired on May 9, 2017. <http://www.cnn.com/2017/06/07/politics/james-comey-memos-testimony/index.html>.

20. On May 10, 2017 – the day after President Trump fired Director Comey – Butowsky and Zimmerman called Mr. Wheeler to inform him that they had supposedly secured a

source at the FBI who confirmed that emails were sent between Seth Rich and WikiLeaks. This anonymous source was cited in the Article.

21. The following day, on May 11, 2017, Zimmerman sent Mr. Wheeler a draft of the Article. Butowsky was cc'd on the email. The draft did not contain any quotes from Mr. Wheeler to the effect that Seth Rich had sent any emails to WikiLeaks, nor did the draft quote Mr. Wheeler as saying that the DNC, Democratic Party or Clintons were engaged in a cover-up.

22. Three days later, Butowsky informed Mr. Wheeler that President Trump had read a draft of the story and wanted it published "immediately." Upon information and belief, President Trump wanted the Article published to help lift the cloud of the Russia investigation.

23. Less than 24 hours later, on May 15, 2017, via email, Zimmerman informed Mr. Wheeler that the Article would be published imminently. Butowsky was cc'd on the email. The story was published the following morning with the false quotations from Mr. Wheeler that were clearly fabricated to lend support to the claim that Seth Rich, and not the Russians, was the source for the DNC emails released on WikiLeaks. Indeed, following the publication of the story, Zimmerman and Butowsky admitted that the parts of the story regarding "the emails" and "the connection to Wikileaks" had not, in fact, come from Mr. Wheeler.

24. On May 23, 2017, Fox finally retracted the Article and issued the following statement, "the May 16 story was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed," the statement said. "We will continue to investigate this story and will provide updates as warranted."

25. However, Fox did not clear Mr. Wheeler's name and never admitted that Zimmerman had misquoted him. As such, Mr. Wheeler requested and attended a meeting with

Dianne Brandi, Fox News's Executive Vice President, Legal and Business Affairs, and Jay Wallace, Fox News's Executive Vice President of News and Editorial. Mr. Wheeler explained to Ms. Brandi and Mr. Wallace that he had not provided Zimmerman with the quotations she used in her article. He also informed Ms. Brandi and Mr. Wallace that Zimmerman had admitted that Mr. Wheeler had not provided her the information regarding WikiLeaks that she attributed to him in the Article. Nevertheless, to this day Fox has not issued any statement admitting that the quotes attributed to Mr. Wheeler were not made by him, nor has Fox apologized to Mr. Wheeler.

26. Because Fox, Butowsky and Zimmerman have refused to publically confirm that Mr. Wheeler never made the comments, he has experienced substantial professional and reputational harm.

27. At the same time that Fox was helping the Trump Administration divert public attention away from the Russian hacking scandal, Fox Executives were testifying under oath before British regulators about how equipped the Company is to control Sky plc ("Sky"), the British media conglomerate.

28. Specifically, Fox Executives, including Gerson Zweifach ("Zweifach"), General Counsel and Chief Compliance Officer of Twenty-First Century Fox, declared to British regulators that Fox is "fit and proper" to own Sky despite the attenuating power to influence the news agenda and the political process. On at least four occasions, March 27, 2017, April 11, 2017, May 11, 2017 and May 30, 2017, Zweifach and other Fox Executives met with officials in London in an attempt to convince them that Fox had in place procedures to ensure compliance with broadcasting standards to purchase Sky, and to alleviate concerns regarding Fox's ability to influence the media.

29. Shockingly, it is clear that simultaneous with such baseless claims of nonpartisanship, Fox was contriving with Butowsky and members of the Trump Administration to publish and disseminate fake news to affect politics in America.

30. Such devious scheming is precisely why British regulators have yet to provide a green light to Fox for the Sky takeover bid, and why many U.K. politicians question whether Fox is capable of news dissemination in a fair and neutral manner.

31. The overt alliance between Rupert Murdoch's media conglomerate and Donald Trump is longstanding. Notwithstanding Ofcom's inquiries into Fox's ability to convey news in a nonpartisan manner, the collaboration appears only to have deepened since President Trump's Administration took over the White House.

32. By way of example only, on July 26, 2017, President Trump dined with Fox's star host Sean Hannity, former Fox co-president Bill Shine and the former White House communications director Anthony Scaramucci. According to The Washington Post, a senior White House official said that the four men met to "discuss overhauling the West Wing staff and [Trump's] political strategy." https://www.washingtonpost.com/news/post-politics/wp/2017/07/26/trump-dines-with-sean-hannity-ousted-fox-executive-bill-shine-and-scaramucci/?utm_term=.56065337c58a.

33. As a result of the abhorrent conduct described herein, Mr. Wheeler brings claims for defamation against Defendants Twenty-First Century Fox, Inc. ("21st Century Fox"), Fox News Network LLC ("Fox News") (21st Century Fox and Fox News, together, "Fox"), Malia Zimmerman and Ed Butowsky.

JURISDICTION AND VENUE

34. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as Mr. Wheeler is a resident of the state of Maryland and: (i) Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC are Delaware corporations with their principal place of business in New York County, New York; (ii) Defendant Malia Zimmerman resides in California; and (iii) Defendant Ed Butowsky resides in the state of Texas. Thus, there is complete diversity between Plaintiff and Defendants. In addition, pursuant to 28 U.S.C. § 1332(a), the amount in controversy, exclusive of costs and interest, is in excess of \$75,000.

35. This Court has personal jurisdiction over Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC pursuant to New York Civil Practice Law and Rules § 301 (“CPLR”) because Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC have offices and their principal places of business in New York, New York, and the causes of action alleged herein arise out of Defendants Twenty-First Century Fox, Inc.’s and Fox News Network LLC’s activities in New York, New York. This Court also has personal jurisdiction over Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC under CPLR 302(a) because this action arises out of Defendants Twenty-First Century Fox, Inc.’s and Fox News Network LLC’s transaction of business and/or supply of services in New York, New York.

36. This Court has personal jurisdiction over Defendant Malia Zimmerman pursuant to CPLR § 301 because Defendant Zimmerman works for Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC, including by reporting to her supervisors who work at Defendants Twenty-First Century Fox, Inc.’s and Fox News Network LLC’s principal places of business located at 1211 Avenue of the Americas, New York, New York, and the causes of action alleged herein arise out of Defendant Zimmerman’s activities in New York, New York. This

Court also has personal jurisdiction over Defendant Zimmerman under CPLR 302(a) because this action arises out of Defendant Zimmerman's transaction of business and/or supply of services in New York, New York.

37. This Court has personal jurisdiction over Defendant Ed Butowsky pursuant to CPLR § 301 because Defendant Butowsky works as an agent for Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC, including by performing work for Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC at their principal place of business, located at 1211 Avenue of the Americas, New York, New York, and the causes of action alleged herein arise out of Defendant Butowsky's activities in New York, New York. This Court also has personal jurisdiction over Defendant Butowsky under CPLR 302(a) because this action arises out of Defendant Butowsky's transaction of business and/or supply of services in New York, New York.

38. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC reside in this judicial district and a substantial portion of the events or omissions giving rise to this action occurred in this judicial district.

PARTIES

39. Plaintiff Rod Wheeler is a resident of the state of Maryland. Mr. Wheeler is a former Washington DC homicide detective and now works in the private sector as an investigator. The family of Seth Rich ("Rich Family") hired Mr. Wheeler to conduct a private investigation of Seth Rich's murder. Butowsky agreed to pay for all of Mr. Wheeler's work in connection with this investigation. For more than a decade, on a "per appearance" basis, Mr. Wheeler has appeared on Fox programs to comment on local and national crime stories.

40. Defendant Twenty-First Century Fox, Inc. is duly organized and existing under and by virtue of the laws of the State of Delaware, and has its principal place of business at 1211 Avenue of the Americas, New York, New York. At all relevant times, Twenty-First Century Fox, Inc. publishes its content for www.foxnews.com from its headquarters at 1211 Avenue of the Americas, New York, New York. At all relevant times, Twenty-First Century Fox, Inc. airs its programs on network channels from its headquarters at 1211 Avenue of the Americas, New York, New York.

41. Defendant Fox News Network LLC is a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware, and has its principal place of business at 1211 Avenue of the Americas, New York, New York. Fox News Network LLC is a wholly owned subsidiary of Twenty-First Century Fox, Inc.

42. Defendant Malia Zimmerman resides in Los Angeles, California. Defendant Zimmerman is an investigative reporter at Fox that reports to Fox editors, including Greg Wilson, the Deputy Managing editor of foxnews.com and Refet Kaplan, Managing Director of foxnews.com, who work out of Fox's headquarters located at 1211 Avenue of the Americas, New York, New York.

43. Defendant Ed Butowsky resides in Addison, Texas. Defendant Butowsky is an "internationally known financial advisor" that advises clients throughout the U.S., including in New York. Defendant Butowsky regularly and frequently performs work for Fox at its headquarters, located at 1211 Avenue of the Americas, including, but not limited to, by appearing on live programs for Fox in his position as a "Fox News Financial Advisor Analyst." These programs air from the Fox studios located at 1211 Avenue of the Americas, New York, New York. Defendant Butowsky also regularly and frequently writes articles for Fox. These articles

are disseminated nationally through Fox's headquarters at 1211 Avenue of the Americas, including online at www.foxbusiness.com. Additionally, in connection with the specific events giving rise to this action, including the publication of the Article, Defendant Butowsky worked with and was involved in the discussion of whether to publish the Article with Fox editors, including Greg Wilson, the Deputy Managing editor of foxnews.com and Refet Kaplan, Managing Director of foxnews.com. Mr. Wilson and Mr. Kaplan work out of Fox's headquarters, located at 1211 Avenue of the Americas, New York, New York.

FACTS

I. ED BUTOWSKY'S CONNECTIONS TO NEW YORK

44. Butowsky transacts substantial business in New York, including New York City, and contracts to supply goods and services in New York, including New York City. Butowsky conducts such business and services through his private financial consulting services. By way of example only, Butowsky has clients that reside in New York, and for purposes of his private consulting, Butowsky consults with and retains the services of financial experts who reside and work out of New York, New York.

45. According to his website, Butowsky works for wealthy individuals, including "top athletes" and "celebrities," throughout the U.S., that requires him to regularly conduct business in New York, New York, including working with "Wall Street based" financial experts. Butowsky founded an exclusive investment club for athletes throughout the U.S. called the Clubhouse Investment Club (the "Club"). <https://www.lifehealth.com/athletes-celebrities-finance-gurus-form-exclusive-club-for-investors/>.

46. In connection with the Club, Butowsky advertises that his "team" consists of "research analysts, venture capital investment professionals and private equity experts... from

Wall Street including institutional investors, all-star analysts, venture capitalists and investment bankers.”

47. For years, including in 2017, Butowsky worked extensively with Fox, in his position as a “**Fox News Financial Advisor Analyst.**” As part of this work, Butowsky has appeared on countless Fox programs, all of which are produced and aired through Fox’s headquarters, located at 1211 Avenue of the Americas, New York, New York. In connection with this work, Butowsky regularly comes to New York, New York, and appears on live programs. Also in connection with these appearances, Butowsky works with producers and senior Fox executives who work out of Fox’s headquarters, 1211 Avenue of the Americas.

48. By way of example only, on the following dates, Butowsky appeared on Fox programs in this capacity:

- January 13, 2017, <http://www.edbutowsky.com/vlog/stock-market-valuation-analysis/>;
- January 15, 2017, <http://www.edbutowsky.com/fox-news/lowering-corporate-tax-rate-lead-greater-investment/>;
- February 10, 2017, <http://www.edbutowsky.com/fox-business/us-markets-hit-time-highs-president-trumps-tax-comments/>;
- February 17, 2017, <http://www.edbutowsky.com/fox-business/ed-butowsky-joins-varney-company-2-15-17/>;
- February 24, 2017, <http://www.edbutowsky.com/fox-business/ed-butowsky-joins-varney-co-2-24-17/>;
- March 2, 2017, <http://www.edbutowsky.com/fox-business/not-normal-presidential-rally/>;
- March 2, 2017, <http://www.edbutowsky.com/fox-business/gold-still-worth-hype/>;
- March 9, 2017, <http://www.edbutowsky.com/fox-business/stock-markets-shrug-off-turmoil-avoid-sell-off-for-now/>;

- March 30, 2017, <http://www.edbutowsky.com/fox-business/how-will-markets-react-to-health-deal/>;
- April 6, 2017, <http://www.edbutowsky.com/fox-business/big-tech-fab-five-leading-the-way-in-the-market/>;
- April 17, 2017, <http://www.edbutowsky.com/fox-business/stock-market-optimism-returns/>;
- April 21, 2017, <http://www.edbutowsky.com/fox-business/corporate-tax-reform-this-year/>;
- April 30, 2017, <http://www.edbutowsky.com/fox-business/gdp-report-shows-weak-growth-q1/>; and
- May 12, 2017, <http://www.edbutowsky.com/media-center/signs-economic-growth-horizon/>.

49. Butowsky also frequently writes articles for Fox that are published by Fox, through its headquarters located at 1211 Avenue of the Americas, including online at www.FoxBusiness.com. As a necessary part of his appearances, Butowsky regularly and frequently works with producers and senior Fox executives who work out of Fox's headquarters, 1211 Avenue of the Americas.

50. Butowsky also appears on other networks that are based in New York, New York, and that air programs from New York, including CNN, ABC, CBS, NBC, CNBC, Bloomberg TV and China TV. In connection with this work, Butowsky regularly comes to New York, New York, and appears on live programs for these networks.

51. Butowsky also regularly speaks on radio shows broadcast around the country, including in New York, such as "Mad Dog Radio" and "Bloomberg Radio."

52. Butowsky's site claims that in 2010, he founded "Paramount Access Advisors, LLC: a registered investment company designed to work with RIAs (registered investment advisors) and broker dealers around the country."

53. As alleged herein, Butowsky and Zimmerman collaborated and worked on the content of the Article for months prior to the publication on May 16, 2017. As part of Butowsky's and Zimmerman's efforts to persuade Fox to publish the Article, Butowsky and Zimmerman recruited Mr. Wheeler to obtain "evidence" from his private investigation into Seth Rich's murder, such that they could use him as a potential source in their reporting to argue that the Russians were not involved in the hacking of DNC emails and subsequent leak to WikiLeaks.

54. At all relevant times, Butowsky's and Zimmerman's work on the substantive content of the Article was a joint effort. As alleged herein, Mr. Wheeler received the majority of email communications about his private investigation from Butowsky with Zimmerman cc'd. Further, countless phone calls were had between Mr. Wheeler, Butowsky and Zimmerman, during which they wanted Mr. Wheeler to talk about his private investigation.

55. Countless group texts between Mr. Wheeler, Butowsky and Zimmerman also were exchanged about Mr. Wheeler's ongoing private investigation.

56. At all relevant times, Butowsky and Zimmerman regularly were in contact with Fox executives, including producers, editors and on air talent, who worked out of Fox's headquarters at 1211 Avenue of the Americas, to discuss what they were working on in connection with the content of the Article.

57. Butowsky readily admitted to these Fox executives that he was the "force" behind the Article and had been pushing the publication to happen.

58. Upon information and belief, Butowsky and Zimmerman, separately and together, met with Fox executives at headquarters in New York City to discuss the substance and content of the Article prior to its publication.

59. As detailed herein, Butowsky and Zimmerman exchanged multiple drafts of the Article prior to the publication date, including with Fox executives.

60. These Fox executives, including but not limited to supervising editors Greg Wilson and Refet Kaplan, work from 1211 Avenue of the Americas, where Fox's publication decisions are made and where content is disseminated electronically, over multiple internet platforms, including www.foxbusiness.com.

61. In connection with their work to draft the Article and have it published, Butowsky and Zimmerman were transacting business in New York, New York and supplying services and goods in New York City.

62. In connection with their work and participation with Fox editors and executives to publish the Article online on May 16, 2017, Butowsky and Zimmerman were transacting business in New York, New York and supplying services and goods in New York, New York.

63. Sometime in the 48 or 72 hours after the Article was published, Fox summoned Butowsky to 1211 Avenue of the Americas to personally meet and discuss the Article with several Fox executives, including Mr. Kaplan. In response, Butowsky came to New York and in fact met with Mr. Kaplan sometime during the week of May 16, 2017. Additionally, after this action was commenced on August 1, 2017, Butowsky appeared on CNN with host Chris Cuomo to discuss the Article. <https://www.youtube.com/watch?v=eTWZ9IkPa1E>.

64. During the live program on August 1, 2017, after repeatedly claiming that Mr. Wheeler was "lying," Butowsky told Mr. Cuomo that he "had proof" to show that Mr. Wheeler was lying and that Butowsky would "come up tomorrow [to NYC] and hand it to you." *Id.*

65. Because Mr. Wheeler's defamation claims arise from the false statements that Butowsky, Zimmerman and Fox editors credited him with saying, and Butowsky and

Zimmerman at all times worked with Fox executives in New York, New York to draft, edit and decide to publish the Article with the false quotes via Fox's online platform that is operated and managed at 1211 Avenue of the Americas, Butowsky and Zimmerman transacted business, and supplied services and goods in New York, New York, in connection with the defamatory Article.

66. Notably, in connection with recent motions filed by Butowsky in this action, he submitted a sworn affidavit that fails to state that Butowsky does not conduct any business within New York nor does it state that Butowsky does not supply services or goods in New York.

II. MALIA ZIMMERMAN

67. Malia Zimmerman is an investigative journalist at Fox News.

68. Prior to Fox, Zimmerman was the founder and President of the Hawaii Reporter. <http://www.civilbeat.org/2015/01/editors-desk-hawaii-reporters-malia-zimmerman-bids-aloha/>.

The Hawaii Reporter was a news website funded primarily by Watchdog.org, part of the conservative Franklin Center for Government and Public Integrity. Id. Zimmerman left the Hawaii Reporter in January 2015 to work for Fox News. Id.

69. Zimmerman transacts substantial business in New York, including New York City, and contracts to supply goods and services in New York, including New York City. Zimmerman conducts such business and services through, *inter alia*, her work for Fox as an investigative reporter.

70. At all relevant times, Zimmerman reported directly to Greg Wilson, the Deputy Managing editor of foxnews.com and Refet Kaplan, Managing Director of foxnews.com. Mr. Wilson and Mr. Kaplan work out of Fox's headquarters located at 1211 Avenue of the Americas, New York, New York.

71. Upon information and belief, Zimmerman regularly came to New York, New York to meet with Fox editors.

72. Zimmerman performs substantial work for Fox in connection with her work as a reporter, including the numerous articles that she has authored and had published by Fox. These articles were drafted, edited and approved by her supervisors, Mr. Wilson and Mr. Kaplan, who work out of Fox's headquarters located at 1211 Avenue of the Americas, New York, New York. As such, Zimmerman transacts business in New York, New York and has supplied services and goods in New York, New York.

73. As set forth *supra*, at ¶¶ 56 to 62, because Mr. Wheeler's defamation claims arise from the false statements that Butowsky, Zimmerman and Fox editors credited him with saying, and Butowsky and Zimmerman at all times worked with Fox executives in New York, New York to draft, edit and decide to publish the Article with the false quotes via Fox's online platform that is operated and managed at 1211 Avenue of the Americas, Butowsky and Zimmerman transacted business, and supplied services and goods in New York, New York, in connection with the defamatory Article.

III. DEMOCRATIC NATIONAL COMMITTEE HACKING SCANDAL AND MURDER OF SETH RICH

74. News of the DNC hacking scandal broke on June 14, 2016 when the Washington Post reported that two groups working for the Russian government had accessed the DNC's computer network and were monitoring the DNC's emails and chat communications. [https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0_story.html?hpid=hp_rhp](https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0_story.html?hpid=hp_rhp;); <http://www.cnn.com/2016/12/26/us/2016-presidential-campaign-hacking-fast-facts/index.html>.

75. On July 22, 2016, WikiLeaks released nearly 20,000 emails from the accounts of seven DNC officials. The emails included controversial statements from former DNC Chairwoman, Debbie Wasserman Schultz, indicating bias on the part of the Democratic Party against Bernie Sanders and in favor of Hillary Clinton.

<http://www.cnn.com/2016/12/26/us/2016-presidential-campaign-hacking-fast-facts/index.html>.

76. On October 7, 2016, the Department of Homeland Security released a statement that said that the U.S. Intelligence Community (“USIC”) was “confident that the Russian Government directed the recent compromises of e-mails from US persons and institutions, including from US political organizations.” <https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national>. Subsequently, in December 2016, the CIA and FBI both determined that Russia hacked the DNC and that Russia sought to help President Donald Trump win the White House. https://www.washingtonpost.com/graphics/2017/world/national-security/russia-hacking-timeline/?utm_term=.06444bce83f0.

77. Seth Rich, a 27-year old DNC staffer, was murdered on July 10, 2016. Police determined that the murder occurred in the course of a botched robbery.

78. By the end of August 2016, a number of individuals theorized that Seth Rich – and not the Russians – was actually WikiLeaks’ source for the DNC emails published on July 22, 2016. <http://insider.foxnews.com/2016/08/25/assange-refers-murdered-dnc-staffer-alleged-potential-wikileaks-source>.

79. On August 9, 2016, Julian Assange, the founder of WikiLeaks, made numerous cryptic statements regarding Seth Rich’s potential role as the source of the DNC emails to WikiLeaks. *Id.* These comments fueled a growing conspiracy theory on Twitter, and later on message boards on reddit and 4chan that Seth Rich’s death was connected to the DNC.

<http://www.latimes.com/business/hollywood/la-fi-ct-seth-rich-conspiracy-20170523-htmlstory.html>.

IV. THE “CLOUD” OF THE RUSSIA INVESTIGATION

80. On the morning of March 30, 2017, President Donald Trump called then FBI Director James Comey. During the call, the President described the Russia investigation as a cloud that was impairing his ability to act on behalf of the country. He said he had nothing to do with Russia and asked what could be done to lift the cloud. The President went on to say that if there were some “satellite” associates of his who did something wrong, it would be good to find that out, but that the President hadn’t done anything wrong and hoped that Director Comey would find a way to get it out that he was not being investigated. Director Comey was fired on May 9, 2017. <http://www.cnn.com/2017/06/07/politics/james-comey-memos-testimony/index.html>.

V. BUTOWSKY RECRUITS MR. WHEELER TO INVESTIGATE THE MURDER OF SETH RICH

81. Mr. Wheeler is a former Washington D.C. Police homicide detective and current private investigation consultant.

82. On February 23, 2017, Mr. Wheeler received a text message from Butowsky. The message – which was the first communication Mr. Wheeler ever had with Butowsky – read:

“I appreciate you reading this text message. We have many mutual friends including Adam Housley and many others from Fox News. Although I’m not a paid fox contributor, I do appear frequently on the News channel as well as the business channel. I watched your work for years and admire what you wearing [*sic*] on television. Behind the scenes I do a lot of work, (unpaid) helping to uncover certain stories, my biggest work was revealing most of what we know today about Benghazi. I’m looking for some assistance on something that happened in Washington I would appreciate if you would give me a call at 972.XXX.XXXX. Of all the people you have met in your line of work you have put me right next to those

you view as the most confidential. I am extremely discreet. Is there a time I can give you a call this morning?"

83. Shortly thereafter, Mr. Wheeler called Butowsky and spoke with him for approximately 20 minutes. Butowsky stated that he was calling to enlist Mr. Wheeler to conduct an investigation into the Seth Rich murder. Butowsky explained that the Rich Family was looking to engage an investigator (Mr. Wheeler), and that Butowsky had agreed to foot the bill. Mr. Wheeler informed Butowsky that although he did vaguely recall the details of the murder, it was Mr. Wheeler's impression that the case was a botched robbery as the Washington D.C. police had previously reported. Mr. Wheeler informed Butowsky that he would be delighted to assist the Rich Family and try to identify a suspect.

84. As it turned out, Butowsky and Zimmerman, whom Mr. Wheeler learned was working with Butowsky, were not simply Good Samaritans attempting to solve a murder. Rather, Butowsky and Zimmerman were interested in advancing a political agenda. Specifically, it was their aim to have Mr. Wheeler's investigation confirm that: (i) Seth Rich was responsible for the leaks of DNC emails to WikiLeaks; and (ii) Seth Rich was murdered by a Democrat operative because he leaked the emails to WikiLeaks.

85. Butowsky and Zimmerman hoped that, if Mr. Wheeler could confirm that Seth Rich leaked the DNC emails to WikiLeaks that would debunk reports the Russians were responsible for the DNC hacks. In turn, Butowsky and Zimmerman hoped that, if Mr. Wheeler could shift the blame for the DNC hacks from the Russians to Seth Rich, this would undermine reports of collusion between Russia and the Trump Administration.

86. Indeed, before Butowsky ever contacted Mr. Wheeler, he had already had a conversation on this topic with Seymour (Sy) Hersh. Mr. Hersh is an American investigative

journalist who is notorious for using anonymous sources and is responsible for publishing a number of highly controversial stories.

87. During his conversation with Butowsky, Mr. Hersh claimed that he had received information from an “FBI report.” Mr. Hersh had not seen the report himself, but explained: “I have somebody on the inside who will go and read a file for me. And I know this person is unbelievably accurate and careful. He’s a very high level guy.”

88. According to Mr. Hersh, his source told him that the FBI report states that, shortly after Seth Rich’s murder, the D.C. police obtained a warrant to search his home. When they arrived at the home, the D.C. police found Seth Rich’s computer, but were unable to access it. The computer was then provided to the D.C. police Cyber Unit, who also were unable to access the computer. At that point, the D.C. police contacted the Cyber Unit at the FBI’s Washington D.C. field office. Again, according to the supposed FBI report, the Washington D.C. field office was able to get into the computer and found that in “late spring early summer [2016], [Seth Rich] [made] contact with Wikileaks.” “They found what he had done. He had submitted a series of documents, of emails. Some juicy emails from the DNC.” Mr. Hersh told Butowsky that Seth Rich “offered a sample [to WikiLeaks][,] an extensive sample, you know I’m sure dozens, of emails, and said I want money.”

89. Among other things, during the conversation Butowsky said, “the most important thing is this. Everyone, there’s so many people throughout Trump’s four years and maybe eight years are always going to fall back on the idea that he is not legitimate and the Russians got him elected. This [information about Seth Rich providing emails to WikiLeaks] changes all of that.” He also said that with this information, “[w]e solve the problem about Russians are

the ones that gave the emails because that did not happen. I know that did not happen.

Finally, Butowsky told Mr. Hersh:

“You don’t have to go to the White House, but I have a great history of getting things, of getting things out there without people knowing that I’m the one who did it.”

90. Mr. Hersh cautioned Butowsky that the information was not necessarily true, and that, even if true, it did not preclude the possibility that the Russians also hacked the DNC.

91. In addition, throughout March 2017, Butowsky exhibited a great deal of anxiety with Jack Burkman, a Republican lobbyist who claimed to have evidence that Seth Rich was killed by Russian operatives after Seth Rich discovered that the Russians had hacked the DNC. Obviously this narrative would contradict the story Butowsky wanted to write, and on March 2, 2017, Butowsky asked Zimmerman for Mr. Burkman’s contact information and stated, **“I need to shut him up.”** As Mr. Burkman began to gain additional notoriety, Butowsky’s anxiety grew. On March 23, 2017, immediately after the Rich Family announced that Burkman was involved in setting up a go-fund-me page to assist in investigating the Seth Rich murder, Butowsky wrote to Mr. Wheeler, “I am having a huge anxiety over Burkman today.”

92. On Tuesday, February 28, 2017 Mr. Wheeler met with Butowsky at a restaurant on Capitol Hill in Washington D.C. When Mr. Wheeler arrived, he was surprised to find that Butowsky was accompanied by Zimmerman. Butowsky advised Mr. Wheeler that Zimmerman was an investigative journalist with Fox News, and had been investigating the death of Seth Rich for several months.

93. Following their lunch, Butowsky introduced Mr. Wheeler to the Rich Family. However, before doing so, Butowsky warned Mr. Wheeler: “Make sure to play down Fox News, don’t mention you know Malia [Zimmerman].”

94. Over the course of the following weeks, Mr. Wheeler had multiple conversations with the Rich Family regarding his retention. Mr. Wheeler spoke during this time with Seth's father, Joel, Seth's mother, Mary, and Seth's brother, Aaron.

95. On March 14, 2017, the Rich Family and Mr. Wheeler entered into a written agreement (the "Agreement"), for Mr. Wheeler to interview and investigate "with regards to the official police investigation surrounding the death of Seth Rich."

96. The Agreement was between the Rich Family and Capitol Investigations/Rod Wheeler Private Investigation Consultants, Mr. Wheeler's private investigation company.

97. The Agreement involved Mr. Wheeler's work as a private investigative consultant and had no connection with his appearances on Fox programs to comment on crime stories.

98. Mr. Wheeler's work for Fox was on an "as needed" basis only that resulted in 10 hours or less, on average, a week. The majority of Mr. Wheeler's time was spent working on private investigations and providing individuals and businesses with security consulting services.

99. As part of the Agreement, and set forth expressly, was the understanding that Butowsky, the "third party," was at all times responsible for payment to Mr. Wheeler for his work on behalf of the Rich Family.

100. On or about April 2017, Butowsky wired \$5,000 to Mr. Wheeler as an up-front payment for the investigation. Rather than use his own bank account to send the wire, Butowsky used an account in the name of "GOOGIE, LP."

101. At all relevant times, Butowsky intended that Mr. Wheeler's investigation would provide the proof that he and Zimmerman hoped would show that the Russians were not responsible for hacking the DNC emails given to WikiLeaks. Butowsky told Mr. Wheeler that he

would be working on the investigation and going through Butowsky in order to provide any information to Zimmerman.

102. Thereafter, Mr. Wheeler proceeded to conduct his own investigation into the murder of Seth Rich. This work included interviews with Seth Rich's relatives, co-workers and friends. It also included review of evidence that was available to him through the D.C. police. As a standard part of his investigative work, Mr. Wheeler drafted contemporaneous notes that would eventually assist in a final report of his investigation.

VI. APRIL 2017

103. On April 18, 2017, Butowsky sent a text message to Mr. Wheeler that stated: "Are you in Washington DC area on Thursday afternoon? I am meeting Sean spicer and want you with me." Butowsky's purpose in meeting with Mr. Spicer, President Trump's former press secretary, was to keep him abreast of his investigation of the Seth Rich murder. Indeed, on April 19, 2017, Butowsky sent the following text message to Mr. Wheeler: "Do you have summary done yet?/] Just bulletpointed. Just want to make sure we get point to Sean easily." Butowsky and Mr. Wheeler did in fact meet with Mr. Spicer on April 20, 2017 to keep him informed about the Seth Rich murder investigation. Mr. Spicer was provided with a copy of Mr. Wheeler's investigative narrative and asked Butowsky and Mr. Wheeler to keep him abreast of any developments in the case. Upon information and belief, Butowsky did just that.

104. On April 19, the day before Butowsky and Mr. Wheeler met with Mr. Spicer, Mr. Wheeler met with Sarah Flores, the Director of Public Affairs at the Department of Justice ("DOJ"). Although Mr. Wheeler's meeting did not concern Seth Rich, unbeknownst to Mr. Wheeler at the time, Butowsky had already reached out to talk with Ms. Flores about the Seth Rich murder "investigation." Butowsky sent a text message to Mr. Wheeler that stated: "She

[Ms. Flores] knows me well. Tell her I said hello. Let her know why I was calling her, Seth Rich. Ask her to keep it quiet because we don't know [] who the good or the bad people are anymore. But we know she's one of the really good ones."

105. At all relevant times, Butowsky and Zimmerman were corresponding and talking to Mr. Wheeler about his investigation of Seth Rich's murder, what steps he was taking in the investigation, including who Mr. Wheeler had spoken to and records he had reviewed.

106. On April 24, 2017, Mr. Wheeler was able to interview Detective Della-Camera, who worked for the Washington D.C. Metro Police Department. Detective Della-Camera is the lead homicide detective on the Seth Rich case. The night before the interview, Mr. Wheeler received an email from Butowsky that stated: "Della camera is either helping us or we will go after him as being part of the coverup." This email was between Butowsky, Zimmerman and Mr. Wheeler.

107. Also during this time, Zimmerman sent Mr. Wheeler numerous emails about "research" she had conducted on Detective Della-Camera and the DC police's homicide investigation of Seth Rich. Butowsky was cc'd on many of these emails.

108. Mr. Wheeler eventually met with Detective Della-Camera on April 25, 2017. Detective Della-Camera confirmed that he still believed that Seth Rich's murder was the result of a robbery gone bad. Detective Della-Camera also stated that he had nothing to say or show that would suggest the shooting was related to emails or anything other than a street robbery. Detective Della-Camera also stated that he had no knowledge of any FBI involvement with the Seth Rich murder investigation. Finally, Detective Della-Camera stated that he did not have anything pointing the finger at the DNC other than the conspiracy theories.

109. Although Butowsky and Zimmerman hoped that Detective Della-Camera would say something to support their version of events, Mr. Wheeler reported the meeting and the opinion of Detective Della-Camera that the murder was part of a botched robbery.

110. On April 29, 2017, at 3:36 p.m., without cc'ing Mr. Wheeler, Zimmerman had sent Butowsky a draft of the Article that contained substantially similar to content to what she sent to Mr. Wheeler on May 11, 2017. The subject line of the email read, "draft of story on Seth Rich and Wikileaks."

111. On May 4, 2017, at 3:52 p.m., Zimmerman sent another email to Butowsky, also excluding Mr. Wheeler, with the same subject line that asked if Butowsky had "any news on the key point."

VII. MAY 10, 2017 TO MAY 15, 2017

112. On May 10, 2017 – *the day after President Trump fired Director Comey* – Butowsky and Zimmerman called Mr. Wheeler to inform him that *they* had supposedly secured a source at the FBI who confirmed that emails were sent between Seth Rich and WikiLeaks.

113. The following day, on May 11, 2017, Zimmerman sent Mr. Wheeler a draft of her story regarding the Seth Rich murder. The draft did not contain any quotes from Mr. Wheeler to the effect that Seth Rich had sent any emails to WikiLeaks, nor did the draft quote Mr. Wheeler as saying that the DNC, Democratic Party or Clintons were engaged in a cover-up.

114. On May 14, 2017, at 3:38 p.m., Zimmerman sent another email to Butowsky – and not to Mr. Wheeler – that contained a draft of the Article.

115. Unquestionably, Butowsky was working on the draft of the Article with Zimmerman and involved in the finalization of the Article prior to publication.

116. On the same day, May 14, 2017, Butowsky – who at that point was pressuring Mr. Wheeler to complete his investigation – sent a text message to Mr. Wheeler that stated:

“Not to add any more pressure but the president [Donald Trump] just read the article. He wants the article out immediately. It’s now all up to you. But don’t feel the pressure”

117. Butowsky’s text message was sent less than one week after President Trump fired Director Comey. Upon information and belief, President Trump wanted the Article published to help lift the cloud of the Russia investigation.

118. Moreover, just before Butowsky sent the text message above, he left a voicemail for Mr. Wheeler in which he said, **“A couple minutes ago I got a note that we have the full, uh, attention of the White House, on this. And, tomorrow, let’s close this deal, whatever we’ve got to do. But you can feel free to say that the White House is onto this now.”**

119. Less than 24 hours later, on May 15, 2017, via email, Zimmerman told Mr. Wheeler that the Article would be published imminently.

120. Mr. Wheeler told Zimmerman he was traveling and could not review the drafts of the story she sent to him throughout the day. Zimmerman asked Mr. Wheeler for certain additional quotes to add to her story, and Mr. Wheeler provided them in writing. Specifically, Zimmerman asked Mr. Wheeler for a quote regarding Debbie Wasserman Schultz and Donna Brazile, two former Chairs of the DNC who apparently called Detective Della-Camera to inquire as to why Mr. Wheeler was investigating the Seth Rich murder. Mr. Wheeler provided a quote – in writing – regarding Ms. Wasserman Schultz and Ms. Brazile. Mr. Wheeler followed up with a separate quote – also in writing – later that evening.

121. At no point in time did Mr. Wheeler say that his investigation revealed that Seth Rich sent any emails to WikiLeaks. Mr. Wheeler never said this because he never had access to

Seth Rich's emails or any device or evidence that would permit him to establish that Seth Rich sent any emails to WikiLeaks. Butowsky and Zimmerman knew this fact.

122. The only purported source saying that Seth Rich sent any emails to WikiLeaks was *Butowsky's and Zimmerman's* supposed anonymous source within the FBI. Mr. Wheeler had never even spoken with this anonymous source, to the extent he or she even exists. In fact, when Mr. Wheeler was interviewed by a Fox affiliate on the evening of May 15, 2017, he made sure not to confirm as fact the proposition that Seth Rich sent emails to WikiLeaks, instead confirming only that a "source" (*i.e., Zimmerman's and Butowsky's alleged source*) had information that could link Seth Rich to WikiLeaks.

123. Later in the evening on May 15, 2017, Butowsky sent an email regarding the Article to various Fox News producers and on air talent, including Steve Doocy, Gavin Hadden, Ainsley Earhardt, Brian Kilmeade, Lauren Petterson, Sean Groman and Alan Hall. The email reads:

"The story is up or will be up very early tomorrow morning. Rod Wheeler is up and ready to give interviews. There's more to come on the story but for now this is a massive story there's [*sic*] going to be talked about for a long time. **If you have any questions about the story or more information needed, call me** at 972-XXX-XXXX. **I'm actually the one who's been putting this together but as you know I keep my name out of things because I have no credibility.** One of the big conclusions we need to draw from this is that the Russians did not hack our computer systems and ste[a]l emails and there was no collusion like trump with the Russians."

124. At approximately the same time, Butowsky sent a text message to Mr. Wheeler that reads, in part, "**[t]he narrative in the interviews you might use is that your and Malia's work prove that the Russians didn't hack into the DNC and steal the emails and impact our election.**"

125. Throughout the day on May 15, 2017, Zimmerman and her editors, Mr. Wilson and Mr. Kaplan, engaged in multiple discussions about the Article, including the exchange of drafts via email.

VIII. MAY 16, 2017

126. On the morning of May 16, 2017, Fox published the Article on its site foxnews.com, prominently displaying it as the lead story on Fox's homepage.

127. Fox claims that each month, more than 25 million viewers visit foxnews.com via desktop and more than 34 million users visit the site via mobile devices. As such, Fox knew that the Article containing the defamatory statements would be viewed by millions of people and republished by major online media outlets.

128. Mr. Kaplan and Mr. Wilson made the decision to publish the Article.

129. The Article attributed two quotations to Mr. Wheeler relevant to this action. First, the Article falsely quoted Mr. Wheeler as stating: "My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks." Mr. Wheeler did not provide this quote or make this statement. This statement is false. Butowsky, Zimmerman and the Fox editors knew that Mr. Wheeler had never said that his investigation established an email exchange between Seth Rich and WikiLeaks. To the contrary, Mr. Wheeler had informed Butowsky and Zimmerman that he was denied access to Seth Rich's personal devices, including his cell phones, laptop and email accounts. Given the magnitude of what it would mean had Mr. Wheeler actually uncovered an email connection, both politically for the Trump Administration, and personally for the Rich Family who were still grieving the violent death of their son, the fabrication and dissemination of such a fact was not only made with a gross reckless disregard as to the truth, but also was malicious and cruel.

130. Second, the Article falsely quoted Mr. Wheeler as stating: “My investigation shows someone within the D.C. government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,” “That is unfortunate. Seth Rich’s murder is unsolved as a result of that.” Again, Mr. Wheeler did not provide this quote or make this statement. This statement is false. Butowsky, Zimmerman and the Fox editors knew that Mr. Wheeler had never said that his investigation showed that the murder was unsolved due to the government, DNC or “Clinton team.” To the contrary, Mr. Wheeler had refused to agree that Detective Della-Camera had said anything other than the fact that the murder appeared to be a robbery gone bad. Moreover, the only information Mr. Wheeler had about this issue was what Butowsky and Zimmerman had told him regarding their “anonymous FBI source.”

131. If Fox, including Mr. Wilson and Mr. Kaplan, conducted due diligence to vet the Article, such efforts were grossly reckless to the point of substantiating the requisite degree of malice. Had Mr. Wilson or Mr. Kaplan bothered to contact Mr. Wheeler to question him about the quotes, Mr. Wheeler would have immediately confirmed that the quoted statements were false, that he never, nor could he, make such statements truthfully and that up until that point, Mr. Wheeler’s investigation uncovered no facts to support such claims.

132. No one from Fox contacted Mr. Wheeler about the draft of the Article prior to publication other than Butowsky and Zimmerman. If Fox, including Mr. Wilson and Mr. Kaplan, or other senior editors had subjected the Article to proper editorial scrutiny, then Fox would have known the falsity of the quotes attributed to Mr. Wheeler prior to publication. Understanding the massive political ramifications of the claims in the Article, Fox went ahead and published the Article resulting in national and international focus on the story. Former

House Speaker Newt Gingrich discussed the Article on “Fox & Friends.” It was the lead story on Sean Hannity’s show “Hannity.” All major media outlets reported on the Article.

133. Given the magnitude of what it would mean had Mr. Wheeler actually made this statement, the fabrication and dissemination of such a fact was made with a gross reckless disregard as to the truth, and also was malicious and cruel.

134. By generating false and untrue “facts” about what Mr. Wheeler had purportedly uncovered as part of his private investigation on these issues of national and internal importance, and then writing “quotes” to message these falsehoods, and attributing them to Mr. Wheeler, Butowsky, Zimmerman and Fox knowingly, recklessly and maliciously defamed Mr. Wheeler, his professional ability as a private investigator, his veracity in connection with his reporting and work for the Rich Family, and his reputation.

135. In falsely quoting Mr. Wheeler, Butowsky and Zimmerman attempted – through the publication of fake news – to accomplish what they had set out to do from the start: “solve the problem about Russians are the ones that gave the emails” and establish that “there was no collusion like trump with the Russians.”

136. Indeed, on the morning of May 16, 2017 right after the Article was published, Butowsky sent the following text messages to Mr. Wheeler:

“If you can, try to highlight this puts the Russian hacking story to rest”

“Just reflecting: we need to emphasize the FBI has a report that has been suppressed that shows that Seth rich did this. With Comey recently being fired this will gain a lot of attention and it’s true.” Separately the DC police department has the same information and was told to drop the case.

“The above and stating that the Russian hacking narrative of stealing the records from the DNC is officially dead.”

137. Unquestionably, Butowsky orchestrated the substance and message of the Article. Butowsky also was intimately involved in the timing of the publication and the push to get the Article out as soon as possible after President Trump fired Director Comey.

138. Very shortly after the Article was published, Mr. Wheeler called Butowsky and demanded an explanation for the false statements about him in Zimmerman's article. Butowsky stated that *the quotes were included because that is the way the President wanted the article*, referring to President Donald Trump.

139. Mr. Wheeler contacted Butowsky to complain about the false statements in the Article because Mr. Wheeler knew that Butowsky was the primary force behind the Article's content and influence on Fox to publish.

140. Also on May 16, 2017, Mr. Wheeler called Zimmerman and confronted her about the use of false statements. Zimmerman told Mr. Wheeler that she would have the statements removed from the Article. However, they were not removed and, later that day, Zimmerman told Mr. Wheeler that she had been instructed by her bosses at Fox to leave the false quotes in the story.

141. Later that day, Mr. Wheeler informed various media outlets that he had been misquoted and made clear that he had not seen any emails between Seth Rich and WikiLeaks, nor had he ever even seen Seth Rich's computer.

142. Following Mr. Wheeler's disclosures and in advance of Mr. Wheeler's planned appearance on the Sean Hannity Show, Zimmerman sent a text to Mr. Wheeler that stated, *"Reread the story we sent to you last night [with the false quotes] and stick to that script."*

143. The "we" in that text was Zimmerman and Butowsky.

144. Even weeks later, Butowsky chastised Mr. Wheeler by stating that because Mr. Wheeler refused to confirm the substance of the Article: “You have helped the left win this.” This further exposes Butowsky’s political motivations for assisting in the publication of the defamatory news article.

IX. ZIMMERMAN ADMITS THAT MR. WHEELER DID NOT PROVIDE THE QUOTES ATTRIBUTED TO HIM IN THE MAY 16, 2017 ARTICLE

145. Following the publication of the May 16, 2017 Article, the Rich Family issued a statement condemning the Article and Mr. Wheeler. Zimmerman responded by sending an email to Joel Rich that reads, in part, “As you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you.” In sum, Zimmerman doubled down on the defamatory comments she published about Mr. Wheeler. Indeed, Joel Rich responded with an email accusing Mr. Wheeler of making false statements. According to Butowsky, Zimmerman’s bosses at Fox News, Mr. Wilson and Mr. Kaplan, reviewed the email she sent to Joel Rich and edited it before it was sent.

146. Mr. Wheeler confronted Zimmerman again about her false statements, as well as her false claim to Joel Rich that “much of the information” for her article came from Mr. Wheeler. Mr. Wheeler stated: “I kinda came across a response Malia that you had to Joel . . . the thing that I’m a little concerned about is that it says ‘as you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you.’” Zimmerman responded, “that’s the email that Fox asked me to send him. They wrote it for me and they told me to send it to him.” Mr. Wheeler challenged her: “But that’s not accurate though because much, much of the information did not come from me.” In response, Zimmerman admitted: “Umm, well not not not . . . **Not the part about the emails. Not the part about, I mean about the connection to WikiLeaks**, but the rest of the quotes in the story did. A lot of the quotes

in the story did.” Later in the same conversation, Butowsky also conceded that the quotes were not made by Mr. Wheeler: “[O]ne day you’re going to win an award for having said those things you didn’t say.” Indeed, in another conversation, Mr. Butowsky read, from the Article, to Mr. Wheeler: “my investigation up to this point shows that there was some degree of emails exchanged between Seth Rich and Wikileaks.” Butowsky then said, “Well I know that’s not true . . . I’ve never heard you say that.” “If I’m under oath, I would say I never heard him say that.”

147. In the days after the Article was published, Butowsky left Mr. Wheeler a voicemail that said Fox knew that Zimmerman “never actually spoke to the source” and that Zimmerman had only “heard it from someone else.” Butowsky’s voicemail states that “the guy wouldn’t speak to her [Zimmerman] because that guy is a spy.”

148. Despite this, Zimmerman and Butowsky continued to push Mr. Wheeler to support Fox and the Article. Zimmerman and Butowsky, on behalf of Mr. Wheeler, drafted a response to the Rich Family’s statements. Mr. Wheeler did not write or approve the response. Nevertheless, without Mr. Wheeler’s knowledge, Zimmerman sent the response to her Fox News colleagues and Butowsky posted the response on his Facebook page.

149. The response was posted to Butowsky’s Facebook page on or about May 20, 2017. Mr. Wheeler called Butowsky and asked him about the unauthorized posting of the fabricated response. Butowsky apologized and admitted that he did not have permission to post the response. Later in the same call, Butowsky told Mr. Wheeler that the situation would be a “nightmare that ends, and holy shit look how many phone calls I’m getting congratulating me and thanking me for putting an end to the Russian bullshit.” [] That’s where this is gonna end

up.” Again, Butowsky revealed his political motivations for assisting in the publication of the defamatory news article.

**X. MR. WHEELER REPORTS ZIMMERMAN’S AND BUTOWSKY’S CONDUCT
TO FOX**

150. On May 23, 2017, Fox finally retracted the Article and issued the following, “the May 16 story was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed,” the statement said. “We will continue to investigate this story and will provide updates as warranted.”

151. However, Fox did not clear Mr. Wheeler’s name and never admitted that he was misquoted in the Article.

152. Several weeks after the Article’s publication, a conference call took place between Mr. Wheeler, Jay Wallace, Executive Vice President of News and Editorial, Tom Lowell, Vice President and Managing Editor of News, Greg Wilson, Refet Kaplan and Malia Zimmerman to discuss the false statements attributed to Mr. Wheeler. During this call, Mr. Wheeler repeatedly told Fox that he never made the quoted statements, that they were false, and that Zimmerman and Butowsky knew he did not make the statements. Mr. Wheeler told the Fox executives that he had *no knowledge* about whether email exchanges took place between Seth Rich and WikiLeaks. During this call, Zimmerman admitted that a number of draft versions of the Article were sent to Mr. Wheeler that did not include the false quotes. Unfortunately, Fox executives failed to take any action during the call or after the call to rectify the damage to Mr. Wheeler from the defamatory statements.

153. In further efforts to try to clear his name and professional reputation, Mr. Wheeler requested and attended a meeting with Ms. Brandi and Jay Wallace. Mr. Wheeler explained to

Ms. Brandi and Mr. Wallace that he had not provided Zimmerman with the quotations she used in her article. He also informed Ms. Brandi and Mr. Wallace that Zimmerman had admitted that Mr. Wheeler had not provided her the information regarding WikiLeaks that she attributed to him in the Article.

154. Nevertheless, to this day Fox has not issued any statement admitting that the quotes attributed to Mr. Wheeler were not made by him, causing him severe economic harm, as well as emotional distress.

XI. FOX EXECUTIVES DISINGENUOUSLY TESTIFY TO U.K. REGULATORS THAT FOX IS “FIT AND PROPER” TO LEAD SKY PLC

155. At the same time that Butowsky enticed Mr. Wheeler into investigating the death of Seth Rich, and while Zimmerman and Butowsky were writing the Article that Fox approved and published on May 16, 2017, Fox Executives were testifying in London before British regulators to help secure Fox’s bid to control Sky, plc. Sky, the British media conglomerate, delivers internet, television and mobile services to more than 22 million customers in the U.K., Ireland, Germany, Austria and Italy. Fox, which holds a 39% stake in Sky, announced in December 2016 its bid to purchase the remaining shares for \$11.1 billion.

156. As part of the U.K.’s takeover rules, government officials referred Fox’s takeover bid to Ofcom, the communications regulation agency tasked with investigating Fox and issuing a report as to whether Fox had a “commitment to broadcasting standards.” As part of the regulators’ inquiry, attention was focused on whether Fox was “fit and proper” to exert such enormous influence over U.K.’s news and media industries.

157. In an effort to convince regulators that Fox was in compliance with the rules, senior executives from Fox participated in meetings with Ofcom investigators and provided testimony under oath. Specifically, Fox Executives, including Zweifach, met with regulators in

London on March 27, 2017, April 11, 2017, May 11, 2017 and May 30, 2017, to alleviate concerns regarding Fox's ability to influence the media.

158. Despite public claims that Fox Executives were completely transparent during the Ofcom investigation, upon information and belief, Fox Executives failed to disclose the facts regarding Fox's role in the effort to influence American politics by disseminating the Article and the defamatory statements.

159. Clearly, senior level producers at Fox, as well as Ms. Brandi and Mr. Wallace, were aware of the fact that the Article, while unsubstantiated, provided support to the Trump Administration's desire to divert attention from the Russian email hacking scandal.

160. It is hard to imagine a clearer example of Fox's willingness and determination to influence the news agenda and the political process than a situation where it knowingly generates and publishes fake news to further its own political agenda.

161. Such devious scheming is precisely why British regulators have yet to provide a green light to Fox for the Sky takeover bid, and why many U.K. politicians question whether Fox is capable of news dissemination in a fair and neutral manner.

162. Upon information and belief, Fox owes a continuing duty to report any relevant information to U.K. regulators that impacts the analysis of whether the Company is "fit and proper" to own Sky.

**XII. BUTOWSKY PLANS TO EXTORT SY HERSH IN AN EFFORT TO "SAVE" THE
MAY 16, 2017 STORY**

163. During a May 19, 2017 telephone call between Butowsky and Mr. Wheeler, Butowsky revealed his plan to extort Sy Hersh in an effort to save the May 16, 2017 Seth Rich story. Specifically, Butowsky stated:

“What I’m really good at is going on the offensive, okay. Once we assess the situation, so I’ve got a friend of mine from high school that does a lot of crises management stuff but we both think a lot alike. I sent him the Sy Hersh redacted where it’s just his voice. He is going to record five seconds of Sy’s voice. He’s emailing Sy. That email is going to contain that five seconds and, he’s going to say, you have three hours to write back who at the FBI you spoke to, with his name, that read you the Seth Rich report. If you don’t give us that in three hours, a full recording of everything we have will be at every news agency tonight with your name and phone number on it. If you give it to us, you will never hear from us again.”

Butowsky then claimed that he had Mr. Hersh’s “balls in a noose.” Once the name of the supposed FBI agent was revealed, Butowsky planned to “publish it every fucking place and say, hey guys, guess what, this man has the report, go call him.”

**XIII. MR. WHEELER’S REPUTATION IS DESTROYED BY DEFENDANTS’
DECISION TO DEFAME HIM**

164. Following the publication of the Article, and precisely because of the defamatory statements therein, Mr. Wheeler’s reputation as an objective, credible and intelligent investigator with integrity was completely destroyed.

165. As a direct and proximate result of Fox’s knowing and deliberate misuse of Mr. Wheeler’s reputation as a former homicide detective and professional reputation, Fox benefited from the national and international attention by breaking the story, at Mr. Wheeler’s expense.

166. Among many comments evidencing this fact are the following:

- The New York Times reported that Mr. Wheeler has given “shifting and contradictory accounts” regarding Seth Rich’s connection with WikiLeaks. <https://www.nytimes.com/2017/05/17/us/seth-rich-dnc-wikileaks.html>.
- The New York Times reported that “The Rich family regrets hiring Mr. Wheeler and has objected to his many public comments” and that “Aaron Rich, Mr. Rich’s brother, said in an email Wednesday that Mr. Wheeler has ‘Discredited himself as an objective investigator’ and had lost the confidence of the family. He said that the politicization of his brother’s

death had been ‘painful’ and ‘debilitating.’”

<https://www.nytimes.com/2017/05/17/us/seth-rich-dnc-wikileaks.html>.

- GQ reported: “Here's how the story unraveled. Wheeler, it turns out, is a verifiable dipshit.” <http://www.gq.com/story/fox-news-seth-rich-conspiracy-theory>.
- MSNBC referred to Mr. Wheeler as a “blabbing detective.” <http://www.nbcnews.com/politics/justice-department/slain-dnc-staffer-s-family-orders-blabbing-detective-cease-desist-n762211>.
- The Washington Post reported that the Rich Family said that Mr. Wheeler had “peddled politicized conspiracy theories.” https://www.washingtonpost.com/local/public-safety/family-of-slain-dnc-staffer-fights-back-against-conspiracy-theories-with-cease-and-desist-letter/2017/05/20/6da279c2-3d6f-11e7-8854-21f359183e8c_story.html?utm_term=.36a01d101420.

167. Moreover, the fact that Mr. Wheeler had to correct the record resulted in many media outlets and commentators declaring that Mr. Wheeler had backtracked on his story and statements about Seth Rich, destroying his credibility. Of course, Mr. Wheeler only had to backtrack on his purported statements because he never made the statements to begin with.

168. The harsh criticism and rebukes Mr. Wheeler experienced from the media and the public caused professional and personal contacts to ostracize and avoid him. Professional peers did everything to avoid being associated with Mr. Wheeler. This resulted in his professional visibility being diminished that in turn, directly resulted in economic harm. Fox intentionally prevented Mr. Wheeler from making further appearances on Fox programs, thereby reducing his income, and contributing to his lower visibility and professional profile. This harm is continuing in nature and will be suffered in the future.

169. Also, the hostility and harm caused by the defamatory statements overflowed into his work as a private investigative consultant, causing existing clients’ unnecessary concern and

preventing potential clients from contracting for his services. This further reduced his income. In turn, his professional losses resulted in even more emotional distress.

170. At the time the Article was published, Butowsky, Zimmerman and Fox knew that Mr. Wheeler's investigation on behalf of the Rich Family was ongoing and not complete, that Mr. Wheeler had never even seen Seth Rich's computer, much less had access to his emails, and that the "FBI source" touted by Butowsky and Zimmerman was an individual that Mr. Wheeler had no knowledge of, never met, or even knew this person's (alleged) name.

171. The reckless and intentionally malicious disregard of what Mr. Wheeler knew about Seth Rich's murder and what he represented to Defendants as knowing on May 16, 2017, makes the publication of the Article with the false statements attributed to Mr. Wheeler that much more egregious and unlawful.

172. Fox's decision to generate fake news to promote its own political agenda via the Article is reprehensible standing alone. The fact that Fox engaged in this act, intentionally and knowingly, with the absolute certainty of decimating Mr. Wheeler's professional reputation and career is the very definition of "malicious."

173. Fox should not be allowed to profit from its publication of the Article that it knew was false and defamatory.

XIV. MR. WHEELER IS FURTHER DEFAMED

174. On June 23, 2017, Mr. Wheeler put Defendants on notice of his decision to seek legal counsel and assert claims against Defendants.

175. On June 26, 2017, Butowsky tweeted: "Fox News story was pulled b/c Rod Wheeler said [he] didn't say a quote . . . How much did DNC pay him?" This statement was false.

176. This false and defamatory statement exposed Mr. Wheeler to hostility, contempt, ridicule and professional disgrace. The defamatory statements in the tweet are about Mr. Wheeler and would lead a reader to conclude that in his professional capacity, he was compromised by the DNC and paid to lie in connection with his dispute of the falsely attributed quotes in the Article.

177. Butowsky issued his statement on Twitter knowing that Mr. Wheeler was not “paid” by the DNC nor were his professional opinions compromised by the DNC. Butowsky knew his statements about Mr. Wheeler were false or he made the statements with a reckless disregard for the truth of the statements.

178. Butowsky’s defamatory tweet constitutes defamation *per se* because the statement injured Mr. Wheeler in his trade, business or profession and directly implicates Mr. Wheeler as taking part in a bribe or otherwise unlawful “payoff” by someone from the DNC meant to manipulate and color his professional opinions about Seth Rich’s murder and about Mr. Wheeler’s investigation.

179. On the same day, Butowsky also tweeted: “This shows Rod Wheeler has a major battle with the truth. Everyone needs to hear this. He says the precise words he swears he didn’t say ???” This statement was false.

180. This false and defamatory statement exposed Mr. Wheeler to hostility, contempt, ridicule and professional disgrace. The defamatory statements in the tweet are about Mr. Wheeler and would lead a reader to conclude that in his professional capacity, he lied in connection with his dispute of the falsely attributed quotes in the Article.

181. Butowsky issued his statement on Twitter knowing that Mr. Wheeler was not lying and that he was truthful in his professional opinions. Butowsky knew his statements about

Mr. Wheeler were false or he made the statements with a reckless disregard for the truth of the statements.

182. Butowsky's defamatory tweet constitutes defamation *per se* because the statement injured Mr. Wheeler in his trade, business or profession and directly implicates Mr. Wheeler as a professional investigator that issues false statements, opinions or reports about the subjects of his investigations or conclusions of his investigations.

FIRST CAUSE OF ACTION

(Defamation *per se*)

***Against Twenty-First Century Fox, Inc., Fox News Network LLC,
Malia Zimmerman and Ed Butowsky***

183. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

184. Fox, Zimmerman and Butowsky knowingly and intentionally issued, approved, endorsed and/or ratified defamatory statements about Plaintiff; specifically:

- “‘My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,’ said Wheeler.” This statement was made on May 16, 2017.
- “‘My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,’ Wheeler said. ‘That is unfortunate. Seth Rich’s murder is unsolved as a result of that.’” This statement was made on May 16, 2017.

185. Fox, Zimmerman and Butowsky knew that the statements attributed to Mr. Wheeler were not said by him and/or published the statements with reckless disregard for their truth.

186. The false and defamatory quotes exposed Mr. Wheeler to hostility, contempt, ridicule and professional disgrace.

187. The defamatory statements are attributed to Mr. Wheeler as statements he made in connection with a private investigation and would lead a reader to conclude that, in his professional capacity, he claimed to have uncovered evidence about emails leaked from the DNC, such evidence having national and international security ramifications. The false statements also would lead a reader to conclude that Mr. Wheeler claimed to have uncovered proof about whether the Russian government had meddled in the 2016 presidential campaign.

188. Fox, Butowsky and Zimmerman maliciously attributed the false quotes to Mr. Wheeler knowing that Mr. Wheeler had not claimed to have uncovered any evidence about leaked emails from the DNC, much less had access to any email accounts for Seth Rich. The false quotes would lead a reader to conclude that Mr. Wheeler had claimed to have uncovered intentional government misconduct in connection with the D.C. homicide department's purported compromise by government officials. Fox, Butowsky and Zimmerman attributed the false quotes to Mr. Wheeler knowing that Mr. Wheeler had not claimed to have uncovered any evidence about government interference with the ongoing police investigation of Seth Rich's murder.

189. Fox, Butowsky and Zimmerman knew the false quotes attributed to Mr. Wheeler were false or they made the statements with a reckless disregard for the truth of the statements.

190. As in all claims of defamation, the context in which the false statements were made and attributed to Mr. Wheeler is critical. Here, when the challenged false quotes in the Article are construed in the context of the entire publication as a whole, and tested against the understanding of the average reader, including all relevant factors including the purpose of the statements and the circumstances surrounding the use of the falsely attributed statements, it is clear that Defendants made defamatory statements in the Article.

191. Wheeler never said the actual words attributed to him in the Article and the quotes are false and grossly inaccurate.

192. Attributing those quotations to him had a different effect on the mind of the reader from that which Mr. Wheeler's actual (true) words would have produced.

193. Mr. Wheeler's actual words would have supported his allegations, namely that he had no personal knowledge or concrete evidence that Seth Rich stole thousands of emails from the DNC and leaked them to WikiLeaks or that government officials were wrongfully interfering with the police investigation of Seth Rich's murder. On its face, Mr. Wheeler's actual words would have caused the average reader to arrive at an opposite conclusion about Mr. Wheeler's competence, thereby producing an opposite effect on the mind of a reader than what was published in the Article.

194. Under any interpretation, the falsely attributed quotes to Mr. Wheeler exposed him and his professional career, to injury. By May 16, 2017, the average reader at Foxnews.com would have had to avoid news reports for over six months in order to be unaware of the massive national and international discussions about whether the Russians hacked the DNC emails or whether Russian operatives somehow leaked thousands of DNC emails to WikiLeaks. Indeed, U.S. politicians, news outlets and political commentaries across the country regularly discussed the issue. The likelihood that an average reader at Foxnews.com that read the Article would not understand the magnitude of the statements attributed to Mr. Wheeler is negligible. Further, the average reader would easily understand the issues of national security and the implications surrounding the purported evidence that Mr. Wheeler "discovered" as falsely attributed by Fox, Butowsky and Zimmerman.

195. It is precisely because of these widely known beliefs and ongoing political discussions about Russia's involvement in the DNC hacking, that Defendants' statements were defamatory. Fox, Butowsky and Zimmerman falsely suggested that Mr. Wheeler, a solo private investigator, believed he had "cracked the case" and uncovered evidence that numerous organizations, including the FBI, were unable to find, to prove that it was Seth Rich who had leaked the thousands of emails to WikiLeaks.

196. The defamatory statements in the Article constitute defamation *per se* because the statements injured Mr. Wheeler in his trade, business or profession, and did in fact injure Mr. Wheeler in his trade, business or profession by leading a reader to conclude that Mr. Wheeler claimed to have uncovered evidence showing that Russian hackers had not obtained emails from the DNC and provided them to WikiLeaks but that Seth Rich had done so. Mr. Wheeler never claimed to have uncovered such evidence and in fact, had never reviewed Seth Rich's emails.

197. The average reader of the Article would believe that Mr. Wheeler is a lying and incompetent investigator who does not perform his job with objectivity and integrity.

198. On May 16, 2017, Mr. Wheeler's professional reputation was further damaged when Zimmerman, in concert with her editors at Fox, told Joel Rich: "As you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you." This statement is false.

199. Zimmerman and Fox maliciously made the statement to Joel Rich knowing that the "information" at issue, regarding leaked emails to WikiLeaks and possible government unlawful interference with the homicide investigation by the DC police, had not come from Mr. Wheeler or they made such representations to Joel Rich with reckless disregard for their truth.

200. Further, on June 26, 2017, Butowsky tweeted: “Fox News story was pulled b/c Rod Wheeler said [he] didn’t say a quote . . . How much did DNC pay him?” This statement is false and made maliciously or with a reckless disregard of the truth.

201. On the same day, Butowsky tweeted: “This shows Rod Wheeler has a major battle with the truth. Everyone needs to hear this. He says the precise words he swears he didn’t say ???” This statement is false and made maliciously or with a reckless disregard of the truth.

202. The two tweets issued by Butowsky were about Mr. Wheeler, made in connection with the quotes that Mr. Wheeler had publically declared false, and constitute defamation *per se* because the tweets injured Mr. Wheeler in his trade, business or profession and directly implicate Mr. Wheeler as taking part in a bribe or otherwise unlawful “payoff” by someone from the DNC meant to manipulate and color his professional opinions about Seth Rich’s murder and about Mr. Wheeler’s investigation.

203. Further, the tweets would lead a reader to conclude that in his professional capacity as an investigator, Mr. Wheeler fabricates evidence or otherwise reports false investigative results.

204. Plaintiff has suffered harm as a result of the defamatory statements, including, but not limited to, economic damages, professional and reputational harm, emotional distress and mental anguish. These damages are ongoing and will continue to be suffered by Mr. Wheeler in the future. As such, Plaintiff is entitled to monetary damages.

205. Because of the defamatory statements in the Article, Mr. Wheeler has lost the opportunity to appear on Fox News in his role as a contributor. Because Mr. Wheeler only gets paid in his role as a contributor if he actually makes an appearance, the defamatory statements at issue have caused Mr. Wheeler to lose \$515 per missed appearance. Each year, Mr. Wheeler

estimates that he will suffer approximately \$35,000 or more in special damages as a result of lost opportunities to appear on Fox News because of the defamatory statements in the Article. In addition, each year Mr. Wheeler estimates that he will suffer approximately \$50,000 or more in special damages as a result of potential clients being unwilling to work with Mr. Wheeler because of the defamatory statements in the Article.

206. Fox, Butowsky and Zimmerman published the Article with actual knowledge that the quotes attributed to Mr. Wheeler were false. The defamatory statements were made by Defendants intentionally and maliciously, with the intent to harm Mr. Wheeler or in reckless disregard to the likelihood that Mr. Wheeler would be harmed personally and professionally, such that Mr. Wheeler is entitled to an award of punitive damages.

SECOND CAUSE OF ACTION IN THE ALTERNATIVE

(Defamation)

***Against Twenty-First Century Fox, Inc., Fox News Network LLC,
Malia Zimmerman and Ed Butowsky***

207. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

208. Fox, Zimmerman and Butowsky knowingly and intentionally issued, approved, endorsed and/or ratified defamatory statements about Plaintiff; specifically:

- “‘My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,’ said Wheeler.” This statement was made on May 16, 2017.
- “‘My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,’ Wheeler said. ‘That is unfortunate. Seth Rich’s murder is unsolved as a result of that.’” This statement was made on May 16, 2017.

209. Fox, Zimmerman and Butowsky knew that the statements attributed to Mr. Wheeler were not said by him and/or published the statements with reckless disregard for their truth.

210. The false and defamatory quotes exposed Mr. Wheeler to hostility, contempt, ridicule and professional disgrace.

211. The defamatory statements are attributed to Mr. Wheeler as statements he made in connection with a private investigation and would lead a reader to conclude that, in his professional capacity, he claimed to have uncovered evidence about emails leaked from the DNC, such evidence having national and international security ramifications. The false statements also would lead a reader to conclude that Mr. Wheeler claimed to have uncovered proof about whether the Russian government had meddled in the 2016 presidential campaign.

212. Fox, Butowsky and Zimmerman maliciously attributed the false quotes to Mr. Wheeler knowing that Mr. Wheeler had not claimed to have uncovered any evidence about leaked emails from the DNC, much less had access to any email accounts for Seth Rich. The false quotes would lead a reader to conclude that Mr. Wheeler had claimed to have uncovered intentional government misconduct in connection with the D.C. homicide department's purported compromise by government officials. Fox, Butowsky and Zimmerman attributed the false quotes to Mr. Wheeler knowing that Mr. Wheeler had not claimed to have uncovered any evidence about government interference with the ongoing police investigation of Seth Rich's murder.

213. Fox, Butowsky and Zimmerman knew the false quotes attributed to Mr. Wheeler were false or they made the statements with a reckless disregard for the truth of the statements.

214. As in all claims of defamation, the context in which the false statements were made and attributed to Mr. Wheeler is critical. Here, when the challenged false quotes in the Article are construed in the context of the entire publication as a whole, and tested against the understanding of the average reader, including all relevant factors including the purpose of the statements and the circumstances surrounding the use of the falsely attributed statements, it is clear that Defendants made defamatory statements in the Article.

215. Wheeler never said the actual words attributed to him in the Article and the quotes are false and grossly inaccurate.

216. Attributing those quotations to him had a different effect on the mind of the reader from that which Mr. Wheeler's actual (true) words would have produced.

217. Mr. Wheeler's actual words would have supported his allegations, namely that he had no personal knowledge or concrete evidence that Seth Rich stole thousands of emails from the DNC and leaked them to WikiLeaks or that government officials were wrongfully interfering with the police investigation of Seth Rich's murder. On its face, Mr. Wheeler's actual words would have caused the average reader to arrive at an opposite conclusion about Mr. Wheeler's competence, thereby producing an opposite effect on the mind of a reader than what was published in the Article.

218. Under any interpretation, the falsely attributed quotes to Mr. Wheeler exposed him and his professional career, to injury. By May 16, 2017, the average reader at Foxnews.com would have had to avoid news reports for over six months in order to be unaware of the massive national and international discussions about whether the Russians hacked the DNC emails or whether Russian operatives somehow leaked thousands of DNC emails to WikiLeaks. Indeed, U.S. politicians, news outlets and political commentaries across the country regularly discussed

the issue. The likelihood that an average reader at Foxnews.com that read the Article would not understand the magnitude of the statements attributed to Mr. Wheeler is negligible. Further, the average reader would easily understand the issues of national security and the implications surrounding the purported evidence that Mr. Wheeler “discovered” as falsely attributed by Fox, Butowsky and Zimmerman.

219. It is precisely because of these widely known beliefs and ongoing political discussions about Russia’s involvement in the DNC hacking, that Defendants’ statements were defamatory. Fox, Butowsky and Zimmerman falsely suggested that Mr. Wheeler, a solo private investigator, believed he had “cracked the case” and uncovered evidence that numerous organizations, including the FBI, were unable to find, to prove that it was Seth Rich who had leaked the thousands of emails to WikiLeaks.

220. The defamatory statements in the Article constitute defamation because the statements injured Mr. Wheeler in his trade, business or profession, and did in fact injure Mr. Wheeler in his trade, business or profession by leading a reader to conclude that Mr. Wheeler claimed to have uncovered evidence showing that Russian hackers had not obtained emails from the DNC and provided them to WikiLeaks but that Seth Rich had done so. Mr. Wheeler never claimed to have uncovered such evidence and in fact, had never reviewed Seth Rich’s emails.

221. The average reader of the Article would believe that Mr. Wheeler is a lying and incompetent investigator who does not perform his job with objectivity and integrity.

222. On May 16, 2017, Mr. Wheeler’s professional reputation was further damaged when Zimmerman, in concert with her editors at Fox, told Joel Rich: “As you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you.” This statement is false.

223. Zimmerman and Fox maliciously made the statement to Joel Rich knowing that the “information” at issue, regarding leaked emails to WikiLeaks and possible government unlawful interference with the homicide investigation by the DC police, had not come from Mr. Wheeler or they made such representations to Joel Rich with reckless disregard for their truth.

224. Further, on June 26, 2017, Butowsky tweeted: “Fox News story was pulled b/c Rod Wheeler said [he] didn’t say a quote . . . How much did DNC pay him?” This statement is false and made maliciously or with a reckless disregard of the truth.

225. On the same day, Butowsky tweeted: “This shows Rod Wheeler has a major battle with the truth. Everyone needs to hear this. He says the precise words he swears he didn’t say ???” This statement is false and made maliciously or with a reckless disregard of the truth.

226. The two tweets issued by Butowsky were about Mr. Wheeler, made in connection with the quotes that Mr. Wheeler had publically declared false, and constitute defamation because the tweets injured Mr. Wheeler in his trade, business or profession and directly implicate Mr. Wheeler as taking part in a bribe or otherwise unlawful “payoff” by someone from the DNC meant to manipulate and color his professional opinions about Seth Rich’s murder and about Mr. Wheeler’s investigation.

227. Further, the tweets would lead a reader to conclude that in his professional capacity as an investigator, Mr. Wheeler fabricates evidence or otherwise reports false investigative results.

228. Plaintiff has suffered harm as a result of the defamatory statements, including, but not limited to, economic damages, professional and reputational harm, emotional distress and mental anguish. These damages are ongoing and will continue to be suffered by Mr. Wheeler in the future. As such, Plaintiff is entitled to monetary damages.

229. Because of the defamatory statements in the Article, Mr. Wheeler has lost the opportunity to appear on Fox News in his role as a contributor. Because Mr. Wheeler only gets paid in his role as a contributor if he actually makes an appearance, the defamatory statements at issue have caused Mr. Wheeler to lose \$515 per missed appearance. Each year, Mr. Wheeler estimates that he will suffer approximately \$35,000 or more in special damages as a result of lost opportunities to appear on Fox News because of the defamatory statements in the Article. In addition, each year Mr. Wheeler estimates that he will suffer approximately \$50,000 or more in special damages as a result of potential clients being unwilling to work with Mr. Wheeler because of the defamatory statements in the Article.

230. Fox, Butowsky and Zimmerman published the Article with actual knowledge that the quotes attributed to Mr. Wheeler were false. The defamatory statements were made by Defendants intentionally and maliciously, with the intent to harm Mr. Wheeler or in reckless disregard to the likelihood that Mr. Wheeler would be harmed personally and professionally, such that Mr. Wheeler is entitled to an award of punitive damages.

THIRD CAUSE OF ACTION IN THE ALTERNATIVE
(Libel Per Quod)
Against Twenty-First Century Fox, Inc., Fox News Network LLC,
Malia Zimmerman and Ed Butowsky

231. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

232. Fox, Zimmerman and Butowsky knowingly and intentionally issued, approved, endorsed and/or ratified defamatory statements about Plaintiff; specifically:

- “‘My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,’ said Wheeler.” This statement was made on May 16, 2017.

- “‘My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,’ Wheeler said. ‘That is unfortunate. Seth Rich’s murder is unsolved as a result of that.’” This statement was made on May 16, 2017.

233. Fox, Zimmerman and Butowsky knew that the statements attributed to Mr. Wheeler were not said by him and/or published the statements with reckless disregard for their truth.

234. The false and defamatory quotes exposed Mr. Wheeler to hostility, contempt, ridicule and professional disgrace.

235. The defamatory statements are attributed to Mr. Wheeler as statements he made in connection with a private investigation and would lead a reader to conclude that, in his professional capacity, he claimed to have uncovered evidence about emails leaked from the DNC, such evidence having national and international security ramifications. The false statements also would lead a reader to conclude that Mr. Wheeler claimed to have uncovered proof about whether the Russian government had meddled in the 2016 presidential campaign.

236. Fox, Butowsky and Zimmerman maliciously attributed the false quotes to Mr. Wheeler knowing that Mr. Wheeler had not claimed to have uncovered any evidence about leaked emails from the DNC, much less had access to any email accounts for Seth Rich. The false quotes would lead a reader to conclude that Mr. Wheeler had claimed to have uncovered intentional government misconduct in connection with the D.C. homicide department’s purported compromise by government officials. Fox, Butowsky and Zimmerman attributed the false quotes to Mr. Wheeler knowing that Mr. Wheeler had not claimed to have uncovered any evidence about government interference with the ongoing police investigation of Seth Rich’s murder.

237. Fox, Butowsky and Zimmerman knew the false quotes attributed to Mr. Wheeler were false or they made the statements with a reckless disregard for the truth of the statements.

238. As in all claims of defamation, the context in which the false statements were made and attributed to Mr. Wheeler is critical. Here, when the challenged false quotes in the Article are construed in the context of the entire publication as a whole, and tested against the understanding of the average reader, including all relevant factors including the purpose of the statements and the circumstances surrounding the use of the falsely attributed statements, it is clear that Defendants made defamatory statements in the Article.

239. Wheeler never said the actual words attributed to him in the Article and the quotes are false and grossly inaccurate.

240. Attributing those quotations to him had a different effect on the mind of the reader from that which Mr. Wheeler's actual (true) words would have produced.

241. Mr. Wheeler's actual words would have supported his allegations, namely that he had no personal knowledge or concrete evidence that Seth Rich stole thousands of emails from the DNC and leaked them to WikiLeaks or that government officials were wrongfully interfering with the police investigation of Seth Rich's murder. On its face, Mr. Wheeler's actual words would have caused the average reader to arrive at an opposite conclusion about Mr. Wheeler's competence, thereby producing an opposite effect on the mind of a reader than what was published in the Article.

242. Under any interpretation, the falsely attributed quotes to Mr. Wheeler exposed him and his professional career, to injury. By May 16, 2017, the average reader at Foxnews.com would have had to avoid news reports for over six months in order to be unaware of the massive national and international discussions about whether the Russians hacked the DNC emails or

whether Russian operatives somehow leaked thousands of DNC emails to WikiLeaks. Indeed, U.S. politicians, news outlets and political commentaries across the country regularly discussed the issue. The likelihood that an average reader at Foxnews.com that read the Article would not understand the magnitude of the statements attributed to Mr. Wheeler is negligible. Further, the average reader would easily understand the issues of national security and the implications surrounding the purported evidence that Mr. Wheeler “discovered” as falsely attributed by Fox, Butowsky and Zimmerman.

243. It is precisely because of these widely known beliefs and ongoing political discussions about Russia’s involvement in the DNC hacking, that Defendants’ statements were defamatory. Fox, Butowsky and Zimmerman falsely suggested that Mr. Wheeler, a solo private investigator, believed he had “cracked the case” and uncovered evidence that numerous organizations, including the FBI, were unable to find, to prove that it was Seth Rich who had leaked the thousands of emails to WikiLeaks.

244. The defamatory statements in the Article constitute defamation *per quod* because the statements injured Mr. Wheeler in his trade, business or profession, and did in fact injure Mr. Wheeler in his trade, business or profession by leading a reader to conclude that Mr. Wheeler claimed to have uncovered evidence showing that Russian hackers had not obtained emails from the DNC and provided them to WikiLeaks but that Seth Rich had done so. Mr. Wheeler never claimed to have uncovered such evidence and in fact, had never reviewed Seth Rich’s emails.

245. The average reader of the Article would believe that Mr. Wheeler is a lying and incompetent investigator who does not perform his job with objectivity and integrity.

246. On May 16, 2017, Mr. Wheeler’s professional reputation was further damaged when Zimmerman, in concert with her editors at Fox, told Joel Rich: “As you know, much of our

information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you.” This statement is false.

247. Zimmerman and Fox maliciously made the statement to Joel Rich knowing that the “information” at issue, regarding leaked emails to WikiLeaks and possible government unlawful interference with the homicide investigation by the DC police, had not come from Mr. Wheeler or they made such representations to Joel Rich with reckless disregard for their truth.

248. Further, on June 26, 2017, Butowsky tweeted: “Fox News story was pulled b/c Rod Wheeler said [he] didn’t say a quote . . . How much did DNC pay him?” This statement is false and made maliciously or with a reckless disregard of the truth.

249. On the same day, Butowsky tweeted: “This shows Rod Wheeler has a major battle with the truth. Everyone needs to hear this. He says the precise words he swears he didn’t say ???” This statement is false and made maliciously or with a reckless disregard of the truth.

250. The two tweets issued by Butowsky were about Mr. Wheeler, made in connection with the quotes that Mr. Wheeler had publically declared false, and constitute defamation *per quod* because the tweets injured Mr. Wheeler in his trade, business or profession and directly implicate Mr. Wheeler as taking part in a bribe or otherwise unlawful “payoff” by someone from the DNC meant to manipulate and color his professional opinions about Seth Rich’s murder and about Mr. Wheeler’s investigation.

251. Further, the tweets would lead a reader to conclude that in his professional capacity as an investigator, Mr. Wheeler fabricates evidence or otherwise reports false investigative results.

252. Plaintiff has suffered harm as a result of the defamatory statements, including, but not limited to, economic damages, professional and reputational harm, emotional distress and

mental anguish. These damages are ongoing and will continue to be suffered by Mr. Wheeler in the future. As such, Plaintiff is entitled to monetary damages.

253. Because of the defamatory statements in the Article, Mr. Wheeler has lost the opportunity to appear on Fox News in his role as a contributor. Because Mr. Wheeler only gets paid in his role as a contributor if he actually makes an appearance, the defamatory statements at issue have caused Mr. Wheeler to lose \$515 per missed appearance. Each year, Mr. Wheeler estimates that he will suffer approximately \$35,000 or more in special damages as a result of lost opportunities to appear on Fox News because of the defamatory statements in the Article. In addition, each year Mr. Wheeler estimates that he will suffer approximately \$50,000 or more in special damages as a result of potential clients being unwilling to work with Mr. Wheeler because of the defamatory statements in the Article.

254. Fox, Butowsky and Zimmerman published the Article with actual knowledge that the quotes attributed to Mr. Wheeler were false. The defamatory statements were made by Defendants intentionally and maliciously, with the intent to harm Mr. Wheeler or in reckless disregard to the likelihood that Mr. Wheeler would be harmed personally and professionally, such that Mr. Wheeler is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendants, containing the following relief:

A. An injunction and order permanently restraining Defendants and their partners, officers, owners, agents, successors, employees and/or representatives and any and all persons acting in concert with them, from engaging in any such further unlawful conduct, including the defamation complained of herein;

B. An order directing Defendants to place Plaintiff in the position he would have occupied but for Defendants' defamatory conduct, and to take such affirmative action as is necessary to ensure that the effects of this unlawful conduct are eliminated and do not continue to affect Plaintiff;

C. An award of damages in an amount to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for all monetary and/or economic damages;

D. An award of damages in an amount to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, compensation for his mental anguish and emotional distress, emotional pain and suffering and any other physical and mental injuries;

E. An award of damages to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for harm to his professional and personal reputation and loss of career fulfillment and earnings;

F. An award of punitive damages;

G. An award of costs that Plaintiff has incurred in this action, as well as reasonable attorneys' fees to the fullest extent permitted by law; and

H. Such other and further relief as the Court may deem just and proper.


JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: October 23, 2017
New York, New York

Respectfully submitted,

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